

House Study Bill 46 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT ON
AGING BILL)

A BILL FOR

1 An Act relating to programs and services under the purview of
2 the department on aging.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 10A.402, subsection 5, Code 2013, is
2 amended by striking the subsection.

3 Sec. 2. Section 22.7, subsection 62, Code 2013, is amended
4 to read as follows:

5 62. Records of, information, applications, and files
6 maintained by the department on aging or office of long-term
7 care ombudsman pertaining to clients served assistance provided
8 by the prevention of elder abuse, neglect, and exploitation
9 program department or office, including information relating to
10 complaints made to or investigations by the department on aging
11 or the office of long-term care ombudsman, unless disclosure
12 is otherwise allowed under section 231.42, subsection 12,
13 paragraph "b".

14 Sec. 3. Section 135C.1, Code 2013, is amended by adding the
15 following new subsections:

16 NEW SUBSECTION. 1A. *"Certified volunteer long-term care*
17 *ombudsman"* means a volunteer long-term care ombudsman certified
18 pursuant to section 231.45.

19 NEW SUBSECTION. 13A. *"Office of long-term care ombudsman"*
20 means the office of long-term care ombudsman established
21 pursuant to section 231.42.

22 NEW SUBSECTION. 20A. *"State long-term care ombudsman"*
23 means the state long-term care ombudsman appointed pursuant to
24 section 231.42.

25 Sec. 4. Section 135C.11, subsection 2, Code 2013, is amended
26 to read as follows:

27 2. The procedure governing hearings authorized by this
28 section shall be in accordance with the rules promulgated by
29 the department. A full and complete record shall be kept
30 of all proceedings, and all testimony shall be reported but
31 need not be transcribed unless judicial review is sought
32 pursuant to section 135C.13. Copies of the transcript may be
33 obtained by an interested party upon payment of the cost of
34 preparing the copies. Witnesses may be subpoenaed by either
35 party and shall be allowed fees at a rate prescribed by the

1 department's rules. The director may, after advising the
2 ~~resident advocate committee established pursuant to section~~
3 ~~135C.25~~ certified volunteer long-term care ombudsman, either
4 proceed in accordance with section 135C.30, or remove all
5 residents and suspend the license or licenses of any health
6 care facility, prior to a hearing, when the director finds that
7 the health or safety of residents of the health care facility
8 requires such action on an emergency basis. The fact that ~~no~~
9 ~~resident advocate committee~~ a certified volunteer long-term
10 care ombudsman has not been appointed for a particular facility
11 shall not bar the director from exercising the emergency powers
12 granted by this subsection with respect to that facility.

13 Sec. 5. Section 135C.13, Code 2013, is amended to read as
14 follows:

15 **135C.13 Judicial review.**

16 Judicial review of any action of the director may be sought
17 in accordance with the terms of the Iowa administrative
18 procedure Act, chapter 17A. Notwithstanding the terms of ~~said~~
19 ~~Act~~ chapter 17A, petitions for judicial review may be filed in
20 the district court of the county where the facility or proposed
21 facility is located, and pending final disposition of the
22 matter the status quo of the applicant or licensee shall be
23 preserved except when the director, with the advice and consent
24 of the ~~resident advocate committee established pursuant to~~
25 ~~section 135C.25~~ certified volunteer long-term care ombudsman,
26 determines that the health, safety or welfare of the residents
27 of the facility is in immediate danger, in which case the
28 director may order the immediate removal of such residents.
29 The fact that ~~no resident advocate committee~~ a certified
30 volunteer long-term care ombudsman has not been appointed for a
31 particular facility shall not bar the director from exercising
32 the emergency powers granted by this ~~subsection~~ section with
33 respect to that facility.

34 Sec. 6. Section 135C.14, subsection 8, paragraph d, Code
35 2013, is amended to read as follows:

1 *d.* The notification of ~~resident advocate committees~~
2 certified volunteer long-term care ombudsmen by the department
3 of all complaints relating to health care facilities and the
4 involvement of the ~~resident advocate committees~~ certified
5 volunteer long-term care ombudsmen in resolution of the
6 complaints.

7 Sec. 7. Section 135C.20A, subsection 2, Code 2013, is
8 amended to read as follows:

9 2. The report card form shall be developed by the department
10 in cooperation with representatives of the department on
11 aging, the state long-term care ~~resident's advocate~~ ombudsman,
12 representatives of ~~resident advocate committees~~ certified
13 volunteer long-term care ombudsmen, representatives of
14 protection and advocacy entities, consumers, and other
15 interested persons.

16 Sec. 8. Section 135C.20B, subsection 2, paragraph c, Code
17 2013, is amended to read as follows:

18 *c.* Any information submitted by ~~care review committee~~
19 ~~members or~~ residents with regard to the quality of care of the
20 facility.

21 Sec. 9. Section 135C.37, Code 2013, is amended to read as
22 follows:

23 **135C.37 Complaints alleging violations — confidentiality.**

24 A person may request an inspection of a health care facility
25 by filing with the department, ~~resident advocate committee of~~
26 ~~the facility~~ certified volunteer long-term care ombudsman, or
27 the office of long-term care ~~resident's advocate as established~~
28 ~~pursuant to section 231.42~~ ombudsman, a complaint of an alleged
29 violation of applicable requirements of this chapter or the
30 rules adopted pursuant to this chapter. A person alleging
31 abuse or neglect of a resident with a developmental disability
32 or with mental illness may also file a complaint with the
33 protection and advocacy agency designated pursuant to section
34 135B.9 or section 135C.2. A copy of a complaint filed with ~~the~~
35 ~~resident advocate committee~~ a certified volunteer long-term

1 care ombudsman or the office of long-term care ~~resident's~~
2 ~~advocate~~ ombudsman shall be forwarded to the department. The
3 complaint shall state in a reasonably specific manner the
4 basis of the complaint, and a statement of the nature of the
5 complaint shall be delivered to the facility involved at the
6 time of the inspection. The name of the person who files a
7 complaint with the department, ~~resident advocate committee~~
8 certified volunteer long-term care ombudsman, or the office
9 of long-term care ~~resident's advocate~~ ombudsman shall be kept
10 confidential and shall not be subject to discovery, subpoena,
11 or other means of legal compulsion for its release to a person
12 other than department employees involved in the investigation
13 of the complaint.

14 Sec. 10. Section 135C.38, subsection 1, paragraphs a and c,
15 Code 2013, are amended to read as follows:

16 a. Upon receipt of a complaint made in accordance with
17 section 135C.37, the department or ~~resident advocate committee~~
18 certified volunteer long-term care ombudsman shall make a
19 preliminary review of the complaint. Unless the department
20 or ~~committee~~ certified volunteer long-term care ombudsman
21 concludes that the complaint is intended to harass a facility
22 or a licensee or is without reasonable basis, the department or
23 ~~committee~~ certified volunteer long-term care ombudsman shall
24 make or cause to be made an on-site inspection of the health
25 care facility which is the subject of the complaint within the
26 time period determined pursuant to the following guidelines,
27 which period shall commence on the date of receipt of the
28 complaint:

29 (1) For nursing facilities, an on-site inspection shall be
30 initiated as follows:

31 (a) Within two working days for a complaint determined by
32 the department or ~~committee~~ certified volunteer long-term care
33 ombudsman to be an alleged immediate jeopardy situation.

34 (b) Within ten working days for a complaint determined by
35 the department or ~~committee~~ certified volunteer long-term care

1 ombudsman to be an alleged high-level, nonimmediate jeopardy
2 situation.

3 (c) Within forty-five calendar days for a complaint
4 determined by the department or ~~committee~~ certified volunteer
5 long-term care ombudsman to be an alleged nonimmediate jeopardy
6 situation, other than a high-level situation.

7 (2) For all other types of health care facilities, an
8 on-site inspection shall be initiated as follows:

9 (a) Within two working days for a complaint determined by
10 the department or ~~committee~~ certified volunteer long-term care
11 ombudsman to be an alleged immediate jeopardy situation.

12 (b) Within twenty working days for a complaint determined by
13 the department or ~~committee~~ certified volunteer long-term care
14 ombudsman to be an alleged high-level, nonimmediate jeopardy
15 situation.

16 (c) Within forty-five calendar days for a complaint
17 determined by the department or ~~committee~~ certified volunteer
18 long-term care ombudsman to be an alleged nonimmediate jeopardy
19 situation, other than a high-level situation.

20 c. The department may refer to the ~~resident advocate~~
21 ~~committee~~ certified volunteer long-term care ombudsman of a
22 facility any complaint received by the department regarding
23 that facility, for initial evaluation and appropriate action by
24 the ~~committee~~ certified volunteer long-term care ombudsman.

25 Sec. 11. Section 135C.38, subsection 2, paragraphs a and d,
26 Code 2013, are amended to read as follows:

27 a. The complainant shall be promptly informed of the
28 result of any action taken by the department or ~~committee~~
29 certified volunteer long-term care ombudsman in the matter.
30 The complainant shall also be notified of the name, address,
31 and telephone number of the designated protection and advocacy
32 agency if the alleged violation involves a facility with one
33 or more residents with developmental disabilities or mental
34 illness.

35 d. A person who is dissatisfied with any aspect of the

1 department's handling of the complaint may contact the office
2 of long-term care ~~resident's advocate, established pursuant to~~
3 ~~section 231.42~~ ombudsman, or may contact the protection and
4 advocacy agency designated pursuant to section 135C.2 if the
5 complaint relates to a resident with a developmental disability
6 or a mental illness.

7 Sec. 12. Section 135C.38, subsections 3 and 4, Code 2013,
8 are amended to read as follows:

9 3. An inspection made pursuant to a complaint filed under
10 section 135C.37 need not be limited to the matter or matters
11 included in the complaint. However, the inspection shall
12 not be a general inspection unless the complaint inspection
13 coincides with a scheduled general inspection or unless in the
14 course of the complaint investigation a violation is evident to
15 the inspector. Upon arrival at the facility to be inspected,
16 the inspector shall show identification to the person in charge
17 of the facility and state that an inspection is to be made,
18 before beginning the inspection. Upon request of either the
19 complainant or the department or ~~committee~~ certified volunteer
20 long-term care ombudsman, the complainant or the complainant's
21 representative or both may be allowed the privilege of
22 accompanying the inspector during any on-site inspection
23 made pursuant to this section. The inspector may cancel the
24 privilege at any time if the inspector determines that the
25 privacy of any resident of the facility to be inspected would
26 otherwise be violated. The protection and dignity of the
27 resident shall be given first priority by the inspector and
28 others.

29 4. If upon an inspection of a facility by its ~~resident~~
30 ~~advocate~~ ~~committee~~ certified volunteer long-term care ombudsman
31 pursuant to this section, the ~~committee~~ certified volunteer
32 long-term care ombudsman advises the department of any
33 circumstance believed to constitute a violation of this chapter
34 or of any rule adopted pursuant to it, the ~~committee~~ certified
35 volunteer long-term care ombudsman shall similarly advise the

1 facility at the same time. If the facility's licensee or
2 administrator disagrees with the conclusion of the ~~committee~~
3 certified volunteer long-term care ombudsman regarding the
4 supposed violation, an informal conference may be requested and
5 if requested shall be arranged by the department as provided in
6 section 135C.42 before a citation is issued. If the department
7 thereafter issues a citation pursuant to the ~~committee's~~
8 certified volunteer long-term care ombudsman's finding, the
9 facility shall not be entitled to a second informal conference
10 on the same violation and the citation shall be considered
11 affirmed. The facility cited may proceed under section 135C.43
12 if it so desires.

13 Sec. 13. Section 225C.4, subsection 1, paragraph m, Code
14 2013, is amended to read as follows:

15 *m.* Provide consultation and technical assistance to
16 patients' advocates appointed pursuant to section 229.19, in
17 cooperation with the judicial branch and the ~~resident advocate~~
18 ~~committees appointed for health care facilities~~ certified
19 volunteer long-term care ombudsmen certified pursuant to
20 section ~~135C.25~~ 231.45.

21 Sec. 14. Section 227.2, subsection 2, Code 2013, is amended
22 to read as follows:

23 2. A copy of the written report prescribed by subsection 1
24 shall be furnished to the county board of supervisors, to the
25 county mental health and intellectual disability coordinating
26 board or to its advisory board if the county board of
27 supervisors constitutes ex officio the coordinating board, to
28 the administrator of the county care facility inspected and to
29 its ~~resident advocate committee~~ certified volunteer long-term
30 care ombudsman, and to the department on aging.

31 Sec. 15. Section 227.4, Code 2013, is amended to read as
32 follows:

33 **227.4 Standards for care of persons with mental illness or an**
34 **intellectual disability in county care facilities.**

35 The administrator, in cooperation with the department of

1 inspections and appeals, shall recommend and the mental health
2 and disability services commission created in section 225C.5
3 shall adopt standards for the care of and services to persons
4 with mental illness or an intellectual disability residing in
5 county care facilities. The standards shall be enforced by
6 the department of inspections and appeals as a part of the
7 licensure inspection conducted pursuant to chapter 135C. The
8 objective of the standards is to ensure that persons with
9 mental illness or an intellectual disability who are residents
10 of county care facilities are not only adequately fed, clothed,
11 and housed, but are also offered reasonable opportunities for
12 productive work and recreational activities suited to their
13 physical and mental abilities and offering both a constructive
14 outlet for their energies and, if possible, therapeutic
15 benefit. When recommending standards under this section,
16 the administrator shall designate an advisory committee
17 representing administrators of county care facilities, county
18 mental health and developmental disabilities regional planning
19 councils, and county care facility ~~resident advocate committees~~
20 certified volunteer long-term care ombudsmen to assist in the
21 establishment of standards.

22 Sec. 16. Section 231.4, subsection 1, Code 2013, is amended
23 to read as follows:

24 1. For purposes of this chapter, unless the context
25 otherwise requires:

26 *a. "Administrative action"* means an action or decision made
27 by an owner, employee, or agent of a long-term care facility,
28 assisted living program, elder group home, or by a governmental
29 agency, which affects the service provided to residents or
30 tenants covered in this chapter.

31 *b. "Assisted living program"* means a program which provides
32 assisted living as defined pursuant to section 231C.2 and which
33 is certified under chapter 231C.

34 *c. "Certified volunteer long-term care ombudsman" or*
35 "certified volunteer" means a volunteer long-term care ombudsman

1 certified pursuant to section 231.45.

2 ~~e.~~ d. "*Commission*" means the commission on aging.

3 ~~d.~~ e. "*Department*" means the department on aging.

4 ~~e.~~ f. "*Director*" means the director of the department on
5 aging.

6 ~~f.~~ g. "*Elder group home*" means elder group home as defined
7 in section 231B.1 which is certified under chapter 231B.

8 ~~g.~~ h. "*Equivalent support*" means in-kind contributions
9 of services, goods, volunteer support time, administrative
10 support, or other support reasonably determined by the
11 department as equivalent to a dollar amount.

12 ~~h.~~ i. "*Federal Act*" means the Older Americans Act of 1965,
13 42 U.S.C. § 3001 et seq., as amended.

14 ~~i.~~ j. "*Home and community-based services*" means a continua
15 of services available in an individual's home or community
16 which include but are not limited to case management,
17 homemaker, home health aide, personal care, adult day,
18 respite, home delivered meals, nutrition counseling, and other
19 medical and social services which contribute to the health and
20 well-being of individuals and their ability to reside in a home
21 or community-based care setting.

22 ~~j.~~ k. "*Legal representative*" means a tenant's legal
23 representative as defined in section 231B.1 or 231C.2, or a
24 guardian, conservator, or attorney in fact of a resident.

25 ~~k.~~ l. "*Long-term care facility*" means a long-term care
26 unit of a hospital or a facility licensed under section 135C.1
27 whether the facility is public or private.

28 m. "*Long-term care ombudsman*" means an advocate for
29 residents and tenants of long-term care facilities, assisted
30 living programs, and elder group homes who carries out duties
31 as specified in this chapter.

32 ~~l.~~ n. "*Older individual*" means an individual who is sixty
33 years of age or older.

34 o. "*Options counseling*" means a service involving an
35 interactive process, which may include a needs assessment,

1 directed by the recipient individual and which may include
2 other participants of the individual's choosing and the
3 individual's legal representative, in which the individual
4 receives guidance to make informed choices about long-term
5 living services and supports in order to sustain independent
6 living.

7 ~~m. p.~~ *"Resident"* means ~~a resident or tenant of an~~
8 individual residing in a long-term care facility, assisted
9 ~~living program, or elder group home,~~ excluding facilities
10 licensed primarily to serve persons with an intellectual
11 disability or mental illness.

12 q. "Tenant" means an individual who receives assisted living
13 services through an assisted living program or an individual
14 who receives elder group home services through an elder group
15 home.

16 ~~n. r.~~ *"Unit of general purpose local government"* means the
17 governing body of a city, county, township, metropolitan area,
18 or region within the state that has a population of one hundred
19 thousand or more, that is recognized for areawide planning, and
20 that functions as a political subdivision of the state whose
21 authority is general and not limited to only one function or
22 combination of related functions, or a tribal organization.

23 Sec. 17. Section 231.23A, subsection 2, Code 2013, is
24 amended to read as follows:

25 2. The ~~senior internship~~ older American community service
26 employment program.

27 Sec. 18. Section 231.23A, subsection 7, Code 2013, is
28 amended by striking the subsection.

29 Sec. 19. Section 231.32, Code 2013, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 5. Upon designation, an area agency on
32 aging shall be considered an instrumentality of the state and
33 shall adhere to all state and federal mandates applicable to an
34 instrumentality of the state.

35 Sec. 20. Section 231.33, Code 2013, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 21. Comply with all applicable
3 requirements of the Iowa public employees' retirement system
4 established pursuant to chapter 97B.

5 Sec. 21. Section 231.41, Code 2013, is amended to read as
6 follows:

7 **231.41 Purpose.**

8 The purpose of this subchapter is to establish and provide
9 for the operation of the office of long-term care resident's
10 advocate ombudsman; to carry out, through the office, a state
11 long-term care ombudsman program within the department in
12 accordance with the requirements of the federal Act~~7~~i; and to
13 adopt the supporting federal regulations and guidelines for its
14 operation.

15 Sec. 22. Section 231.42, Code 2013, is amended to read as
16 follows:

17 **231.42 Office of long-term care ~~resident's advocate~~ ombudsman**
18 **— duties — penalties for violations.**

19 1. *Office established.* The office of long-term care
20 ~~resident's advocate~~ ombudsman is established within the
21 department, in accordance with ~~section 712 of the federal~~
22 ~~Act, as codified at 42 U.S.C. § 3058g~~ and state law. The
23 office shall consist of the state long-term care ~~resident's~~
24 ~~advocate and~~ ombudsman, any local long-term care ~~resident's~~
25 ~~advocates~~ ombudsmen, and any certified volunteer long-term care
26 ombudsmen.

27 2. *State long-term care ~~resident's advocate~~ ombudsman.* The
28 director of the department shall appoint the state long-term
29 care ~~resident's advocate~~ ombudsman who shall do all of the
30 following:

31 a. Establish and implement a statewide confidential
32 uniform reporting system for receiving, analyzing, referring,
33 investigating, and resolving complaints about administrative
34 actions and the health, safety, welfare, and rights of
35 residents or tenants ~~of long-term care facilities, assisted~~

1 ~~living programs, and elder group homes, excluding facilities~~
2 ~~licensed primarily to serve persons with an intellectual~~
3 ~~disability or mental illness.~~

4 *b.* Publicize the office of long-term care ~~resident's~~
5 advocate ombudsman and provide information and education to
6 consumers, the public, and other agencies about issues related
7 to long-term care in Iowa.

8 *c.* Monitor the development and implementation of federal,
9 state, and local laws, regulations, and policies that relate to
10 long-term care in Iowa.

11 *d.* Annually report to the governor and general assembly
12 on the activities of the office and make recommendations for
13 improving the health, safety, welfare, and rights of residents
14 and tenants ~~of long-term care facilities, assisted living~~
15 ~~programs, and elder group homes.~~

16 *e.* Cooperate with persons and public or private agencies
17 with regard to, and participate in, inquiries, meetings,
18 or studies that may lead to improvements in the health,
19 safety, welfare, and rights of residents and tenants ~~and the~~
20 ~~functioning of long-term care facilities, assisted living~~
21 ~~programs, and elder group homes.~~

22 *f.* ~~Recruit, train, educate, support, and monitor volunteers~~
23 ~~associated with the office.~~

24 3. *Local long-term care resident's advocates ombudsmen.* The
25 local long-term care ~~resident's advocates~~ ombudsmen established
26 pursuant to this section shall do all of the following:

27 *a.* Accept, investigate, verify, and work to resolve
28 complaints, ~~whether reported to or initiated by a long-term~~
29 ~~care resident's advocate,~~ relating to any action or inaction
30 that may adversely affect the health, safety, welfare, or
31 rights of residents or tenants ~~of a long-term care facility,~~
32 ~~assisted living program, or elder group home.~~

33 *b.* Provide information about long-term care, the rights of
34 residents and tenants, payment sources for care, and selection
35 of a long-term care facility, assisted living program, or elder

1 group home to providers, consumers, family members, volunteers,
2 and the public.

3 c. Make referrals to appropriate licensing, certifying, and
4 enforcement agencies to assure appropriate investigation of
5 abuse complaints and corrective actions.

6 d. Assist in the ~~recruitment,~~ training, and education,
7 ~~support, and monitoring~~ of certified volunteers associated with
8 the office of ~~the long-term care resident's advocate~~ ombudsman.

9 e. Make noncomplaint-related visits to long-term care
10 facilities, assisted living programs, and elder group homes
11 to observe daily routines, meals, and activities, and work to
12 resolve complaints if any are identified during these visits.

13 4. *Referrals of abuse, neglect, or exploitation.*

14 a. If abuse, neglect, or exploitation of a resident
15 or tenant ~~of a long-term care facility, assisted living~~
16 ~~program, or elder group home~~ is suspected, the state or a
17 local long-term care ~~resident's advocate~~ ombudsman shall, with
18 the permission of the resident or tenant as applicable under
19 federal law, make an immediate referral to the department of
20 inspections and appeals, ~~or~~ the department of human services as
21 ~~applicable, and to,~~ the department on aging, or the appropriate
22 law enforcement agency, as applicable. The state or a local
23 long-term care ~~resident's advocate~~ ombudsman shall cooperate,
24 if requested, with the department of inspections and appeals,
25 department of human services, department on aging, or any law
26 enforcement agency pursuant to any investigation of such abuse,
27 neglect, or exploitation.

28 b. If the department of inspections and appeals responds
29 to a complaint referred by the state or a local long-term
30 care ~~resident's advocate~~ ombudsman against a long-term care
31 facility, assisted living program, elder group home, or
32 an employee of such entity, copies of related inspection
33 reports, plans of correction, and notice of any citations and
34 sanctions levied against the facility, program, or home shall
35 be forwarded to the office of ~~the long-term care resident's~~

1 advocate ombudsman.

2 5. Access to long-term care facility, assisted living
3 program, or elder group home and residents and tenants. The
4 state or a local long-term care ~~resident's advocate~~ ombudsman
5 or a ~~trained~~ certified volunteer may enter any long-term care
6 facility, assisted living program, or elder group home at any
7 time with or without prior notice or complaint and shall be
8 granted access to residents and tenants at all times for the
9 purpose of carrying out the duties specified in this section.
10 As used in this section, "access" means the right to do all of
11 the following:

12 a. Enter any long-term care facility, assisted living
13 program, or elder group home and provide identification.

14 b. Seek consent from the resident, tenant, or legal
15 representative to communicate privately and without restriction
16 with any resident, ~~or~~ tenant, or legal representative.

17 c. Communicate privately and without restriction with
18 any resident, tenant, or legal representative, ~~or other~~
19 ~~representative who consents to communication.~~

20 d. Review the ~~clinical~~ medical, social, or other records of
21 a resident or tenant.

22 e. Observe all resident or tenant areas of a long-term care
23 facility, assisted living program, or housing establishment
24 elder group home except the living area of any resident or
25 tenant who protests the observation.

26 6. Access to medical and ~~personal~~ social records.

27 a. The state or a local long-term care ~~resident's advocate~~
28 ombudsman shall have access to the medical and ~~personal~~ social
29 records of an ~~individual who is~~ a resident or tenant of a
30 ~~long-term care facility, assisted living program, or elder~~
31 ~~group home retained by the facility, program, or home.,~~ if any
32 of the following applies:

33 (1) The state or local long-term care ombudsman or certified
34 volunteer long-term care ombudsman has the permission of the
35 resident or tenant, or the legal representative of the resident

1 or tenant.

2 (2) The resident or tenant is unable to consent to the
3 access and has no legal representative.

4 (3) Access to the records is necessary to investigate a
5 complaint if all of the following apply:

6 (a) A legal representative of the resident or tenant refuses
7 to give the permission.

8 (b) The state or local long-term care ombudsman or a
9 certified volunteer long-term care ombudsman has reasonable
10 cause to believe that the legal representative is not acting in
11 the best interest of the resident or tenant.

12 (c) The local long-term care ombudsman or a certified
13 volunteer long-term care ombudsman obtains the approval of the
14 state long-term care ombudsman.

15 *b.* Records may be reproduced by the state or a local
16 long-term care ~~resident's advocate~~ ombudsman.

17 *c.* Upon request of the state or a local long-term care
18 ~~resident's advocate~~ ombudsman, a long-term care facility,
19 assisted living program, or elder group home shall provide the
20 name, address, and telephone number of the legal representative
21 or next of kin of any resident or tenant.

22 *d.* A long-term care facility, assisted living program, or
23 elder group home or personnel of such a facility, program, or
24 home who discloses records in compliance with this section and
25 the procedures adopted pursuant to this section shall not be
26 liable for such disclosure.

27 7. Access to administrative records.

28 a. Pursuant to the federal Act, the state or a local
29 long-term care ombudsman or a certified volunteer shall have
30 access to the administrative records, policies, and documents
31 of the long-term care facility, assisted living program, or
32 elder group home, which are accessible to residents, tenants,
33 or the general public.

34 b. Pursuant to the federal Act, the state or a local
35 long-term care ombudsman or a certified volunteer shall have

1 access to, and upon request, copies of, all licensing and
2 certification records maintained by the state with respect to
3 a long-term care facility, assisted living program, or elder
4 group home.

5 ~~7.~~ 8. *Interference prohibited — penalties.*

6 *a.* An officer, owner, director, or employee of a long-term
7 care facility, assisted living program, or elder group home who
8 intentionally prevents, interferes with, or attempts to impede
9 the work of the state or a local long-term care ~~resident's~~
10 ~~advocate~~ ombudsman or a certified volunteer is subject to a
11 penalty imposed by the director of not more than one thousand
12 five hundred dollars for each violation. If the director
13 imposes a penalty for a violation under this paragraph,
14 no other state agency shall impose a penalty for the same
15 interference violation. Any moneys collected pursuant to this
16 subsection shall be deposited in the general fund of the state.

17 *b.* The office of ~~the long-term care resident's advocate~~
18 ombudsman shall adopt rules specifying procedures for notice
19 and appeal of penalties imposed pursuant to this subsection.

20 *c.* The director, in consultation with the office of ~~the~~
21 long-term care ~~resident's advocate~~ ombudsman, shall notify
22 the county attorney of the county in which the long-term care
23 facility, assisted living program, or elder group home is
24 located, or the attorney general, of any violation of this
25 subsection.

26 ~~8.~~ 9. *Retaliation prohibited — penalties.* An officer,
27 owner, director, or employee of a long-term care facility,
28 assisted living program, or elder group home shall not
29 retaliate against any person for having filed a complaint with,
30 or provided information to, the state or a local long-term
31 care ~~resident's advocate~~ ombudsman or a certified volunteer.
32 A person who retaliates or discriminates in violation of this
33 subsection is guilty of a simple misdemeanor.

34 ~~9.~~ 10. *Change in operations.* A long-term care facility,
35 assisted living program, or elder group home shall inform the

1 office of ~~the~~ long-term care ~~resident's advocate~~ ombudsman
2 in writing at least thirty days prior to any change in
3 operations, programs, services, licensure, or certification
4 that affects residents or tenants, including but not limited
5 to the intention to close, decertify, or change ownership. In
6 an emergency situation, or when a long-term care facility,
7 assisted living program, or elder group home is evacuated, the
8 department of inspections and appeals shall notify the office
9 of ~~the state~~ long-term care ~~resident's advocate~~ ombudsman.

10 ~~10.~~ 11. Immunity. The state or a local long-term care
11 ~~resident's advocate~~ ombudsman, certified volunteer, or any
12 representative of the office participating in the good faith
13 performance of their official duties shall have immunity from
14 any civil or criminal liability that otherwise might result by
15 reason of taking, investigating, or pursuing a complaint under
16 this section.

17 ~~11.~~ 12. Confidentiality.

18 a. Information relating to any complaint made to or
19 investigation by the state or a local long-term care ~~resident's~~
20 ~~advocate that discloses the identity of a complainant,~~
21 ~~resident, or tenant, or~~ ombudsman or certified volunteer,
22 information related to a resident's or tenant's personal social
23 or medical records, or files maintained by the state long-term
24 care ombudsman program shall remain confidential ~~except as~~
25 follows: and shall be disclosed only at the discretion of the
26 state long-term care ombudsman.

27 ~~a.~~ If permission is granted by the director in consultation
28 with the state long-term care resident's advocate.

29 ~~b.~~ If disclosure is authorized in writing by the complainant
30 and the resident, tenant, or the individual's guardian or legal
31 representative.

32 ~~c.~~ If disclosure is necessary for the provision of services
33 to a resident or tenant, or the resident or tenant is unable to
34 express written or oral consent.

35 ~~d.~~ If ordered by a court.

1 b. Information identifying a complainant, resident, or
2 tenant shall remain confidential and shall not be disclosed
3 unless any of the following applies:

4 (1) The complainant, resident, tenant, or a legal
5 representative consents to the disclosure and the consent is
6 given in writing.

7 (2) The complainant, resident, or tenant gives consent
8 orally and the consent is documented contemporaneously in a
9 writing made by the state long-term care ombudsman or a local
10 long-term care ombudsman.

11 (3) The disclosure is required by a court order.

12 c. The department shall adopt rules pursuant to chapter 17A
13 to administer this subsection.

14 ~~12.~~ 13. Posting of state long-term care resident's advocate
15 ombudsman information. Every long-term care facility, assisted
16 living program, and elder group home shall post information
17 in a prominent location that includes the name, address, and
18 telephone number, and a brief description of the services
19 provided by the office of the long-term care resident's
20 advocate ombudsman. The information posted shall be approved
21 or provided by the office of the long-term care resident's
22 advocate ombudsman.

23 Sec. 23. Section 231.45, Code 2013, is amended to read as
24 follows:

25 **231.45 Certified volunteer long-term care resident's advocate**
26 **ombudsman program.**

27 1. The department shall establish a certified volunteer
28 long-term care resident's advocate ombudsman program in
29 accordance with the federal Act to provide assistance to the
30 state and local long-term care resident's advocates ombudsmen.

31 2. The department shall develop and implement a
32 certification process for volunteer long-term care resident's
33 advocates ombudsmen including but not limited to an application
34 process, provision for background checks, classroom or on-site
35 training, orientation, and continuing education.

1 3. ~~The~~ Unless specifically excluded, the provisions of
2 section 231.42 relating to local long-term care ~~resident's~~
3 ~~advocates~~ ombudsmen shall apply to certified volunteer
4 long-term care ~~resident's advocates~~ ombudsmen.

5 4. The department shall adopt rules pursuant to chapter 17A
6 to administer this section.

7 Sec. 24. Section 231.51, subsections 1, 3, and 4, Code 2013,
8 are amended to read as follows:

9 1. The department shall direct and administer the older
10 American community service employment program as authorized
11 by the federal Act in coordination with the department of
12 workforce development ~~and the economic development authority~~.

13 3. Funds appropriated to the department from the United
14 States department of labor shall be distributed to ~~local~~
15 ~~projects~~ subgrantees in accordance with federal requirements.

16 4. The department shall require such uniform reporting
17 and financial accounting by ~~area agencies on aging and local~~
18 ~~projects~~ subgrantees as may be necessary to fulfill the
19 purposes of this section.

20 Sec. 25. Section 231.53, Code 2013, is amended to read as
21 follows:

22 **231.53 Coordination with Workforce Investment Act.**

23 The ~~senior internship~~ older American community service
24 employment program shall be coordinated with the federal
25 Workforce Investment Act administered by the department of
26 workforce development.

27 Sec. 26. Section 231.56A, Code 2013, is amended to read as
28 follows:

29 **231.56A Prevention of elder abuse, neglect, and exploitation**
30 **program.**

31 1. The department shall administer the prevention of elder
32 abuse, neglect, and exploitation program in accordance with the
33 requirements of the federal Act. The purpose of the program
34 is to carry out activities for intervention in, investigation
35 of, and response to elder abuse, neglect, and exploitation

1 including financial exploitation.

2 ~~2. The target population of the program shall be any~~
3 ~~older individual residing in Iowa who is at risk of or who~~
4 ~~is experiencing abuse, neglect, or exploitation including~~
5 ~~financial exploitation.~~

6 ~~3. The contractor implementing the program shall identify~~
7 ~~emergency shelter and support services, state funding,~~
8 ~~outcomes, reporting requirements, and approved community~~
9 ~~resources from which services may be obtained.~~

10 ~~4. The contractor shall implement the program and shall~~
11 ~~coordinate the provider network through the use of referrals or~~
12 ~~other engagement of community resources to provide services to~~
13 ~~older individuals.~~

14 ~~5.~~ 2. The department shall adopt rules to implement this
15 section.

16 Sec. 27. Section 231.64, Code 2013, is amended to read as
17 follows:

18 **231.64 Aging and disability resource center program.**

19 1. The aging and disability resource center program shall
20 be administered by the department consistent with the federal
21 Act. The department shall designate participating entities
22 to establish a coordinated system for providing all of the
23 following:

24 a. Comprehensive information, referral, and assistance
25 regarding the full range of available public and private
26 long-term care programs, options, service providers, and
27 resources within a community, including information on the
28 availability of integrated long-term care.

29 b. ~~Personal~~ Options counseling to assist individuals in
30 assessing their existing or anticipated long-term care needs
31 and developing and implementing a plan for long-term care
32 designed to meet their specific needs and circumstances.

33 The plan for long-term care may include support with
34 person-centered care transitions to assist consumers and family
35 caregivers with transitions between home and care settings.

1 c. Consumer access to the range of publicly-supported
2 long-term care programs for which consumers may be eligible, by
3 serving as a convenient point of entry for such programs.

4 2. The aging and disability resource center ~~program~~
5 shall assist older individuals, persons with disabilities
6 age eighteen or older, family caregivers, and people who
7 inquire about or request assistance on behalf of members of
8 these groups, as they seek long-term care living services and
9 community supports.

10 Sec. 28. Section 231B.1, subsection 10, Code 2013, is
11 amended to read as follows:

12 10. "*Tenant advocate*" means the office of ~~the~~ long-term care
13 ~~resident's advocate~~ ombudsman established in section 231.42.

14 Sec. 29. Section 231C.2, subsection 15, Code 2013, is
15 amended to read as follows:

16 15. "*Tenant advocate*" means the office of long-term care
17 ~~resident's advocate~~ ombudsman established in section 231.42.

18 Sec. 30. Section 235B.6, subsection 2, paragraph e,
19 subparagraph (10), Code 2013, is amended to read as follows:

20 (10) The state or a local long-term care ~~resident's advocate~~
21 ombudsman if the victim resides in a ~~long-term care facility~~
22 or the alleged perpetrator is an employee of a long-term care
23 facility as defined in section 231.4.

24 Sec. 31. Section 669.14, subsection 12, Code 2013, is
25 amended to read as follows:

26 12. Any claim based upon the actions of a ~~resident advocate~~
27 ~~committee member~~ certified volunteer long-term care ombudsman
28 in the performance of duty if the action is undertaken and
29 carried out in good faith.

30 Sec. 32. REPEAL. Sections 16.182, 135C.25, 231.44, 231.52,
31 and 231B.19, Code 2013, are repealed.

32 Sec. 33. REPEAL. Chapter 249H, Code 2013, is repealed.

33

EXPLANATION

34 This bill includes provisions relating to programs and
35 services under the purview of the department on aging (IDA).

1 The bill eliminates a provision relating to the duties
2 of the administrator of the investigations division of the
3 department of inspections and appeals. The provision directs
4 the administrator to coordinate investigations relative to the
5 operations of IDA. The language potentially conflicts with the
6 autonomy of the office of state long-term care ombudsman.

7 The bill amends the language relating to confidential
8 records under the purview of IDA. The bill replaces the
9 protection of records of IDA pertaining to only one program,
10 to instead protect documents maintained by IDA or the office
11 of long-term care ombudsman pertaining to assistance provided
12 by IDA or the office, including information pertaining to
13 complaints made or investigations by IDA or the office unless
14 otherwise exempt from confidentiality protections.

15 The bill changes the term "resident advocate" to ombudsman
16 throughout the Code, removes references to "care review
17 committee", which no longer exists, and changes references in
18 the Code to conform with changes made with the enactment of
19 Code section 231.45 by the 2012 general assembly by replacing
20 "resident advocate committee" with "certified volunteer
21 long-term care ombudsman" throughout the Code.

22 The bill includes new definitions for "long-term care
23 ombudsman", "options counseling", and "tenant" in Code chapter
24 231 (department on aging — older Iowans); includes a provision
25 establishing that area agencies on aging are instrumentalities
26 of the state based on a number of opinions of the attorney
27 general (1980 Op. Att'y Gen 51; 1980 Op. Att'y Gen 317; 1984
28 Op. Att'y Gen 140; 1988 Op. Att'y Gen 1; and 1993 Op. Att'y
29 Gen 71); and includes a conforming provision to the provision
30 in Code chapter 97B (Iowa public employees' retirement system
31 (IPERS)) in Code chapter 231 including area agencies on aging
32 in the definition of "employer" under IPERS.

33 The bill amends provisions relating to confidentiality
34 regarding complaints and relating to access of the state or
35 local long-term care ombudsman and certified volunteers to

1 the locations of long-term care facilities, assisted living
2 programs, and elder group homes as well as to medical, social,
3 and administrative records of residents and tenants of these
4 entities to carry out their duties, consistent with the federal
5 Older Americans Act.

6 The bill deletes a reference to the economic development
7 authority, which is no longer involved in the community service
8 employment program; changes the terminology relating to the
9 senior internship program, which has been replaced by the older
10 American community service employment program; and aligns
11 provisions relating to the prevention of elder abuse, neglect,
12 and exploitation in accordance with the federal Older Americans
13 Act.

14 The bill repeals Code chapter 249H, relating to the senior
15 living program, and Code section 16.182, establishing the
16 senior living revolving loan program fund. The senior living
17 trust fund was depleted at the end of FY 2011.